

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Toratio Deval Williams,	)	
	)	C/A No. 2:19-1296-MBS
Plaintiff,	)	
	)	
vs.	)	
	)	<b>OPINION AND ORDER</b>
Adam B. Throckmorton, S.M. Aiken,	)	
and John Rogers,	)	
	)	
Defendants.	)	
_____	)	

At the time of the underlying events, Plaintiff Toratio Deval Williams was a pretrial detainee at the Dorchester County Detention Center in Summerville, South Carolina. Plaintiff, proceeding pro se and in forma pauperis, filed a complaint on May 3, 2019, alleging that Defendants Adam B. Throckmorton, S.M. Aiken, and John Rogers of the Summerville Police Department arrested him in violation of the Fourth Amendment. See 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling.

Defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) on July 9, 2019. Defendants contend all claims against them in their official capacities are barred by the protections and provisions afforded under sovereign and qualified immunity. On July 10, 2019, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4<sup>th</sup> Cir. 1975), the Magistrate Judge advised Plaintiff of the dismissal procedures and the possible consequences if he failed to respond adequately. The envelope containing the Roseboro order was returned to the Office of the Clerk of Court on July 31, 2019, marked "Return to Sender - Undeliverable as Addressed - Unable to Forward. On August 22, 2019, the court received notice of a current address for Plaintiff. A Roseboro order granting Plaintiff

additional time to respond was forwarded to Plaintiff at the new address. Plaintiff filed no response to the motion to dismiss.

On September 25, 2019, the Magistrate Judge filed a Report and Recommendation in which he recommended that the within action be dismissed pursuant to Fed. R Civ. P. 41(b) for failure to prosecute. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). This court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). This court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. Id. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation and incorporates it herein by reference. The complaint is dismissed without prejudice pursuant to Rule 41(b) for failure to prosecute.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
Senior United States District Judge

Columbia, South Carolina  
November 1, 2019